



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FF

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated July 28, 2017 and setting the end of tenancy for August 31, 2017
- b. An order that the landlord comply with the Act, Regulations and/or tenancy agreement.
- c. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Notice to End Tenancy was sufficiently served on the Tenant by posting on July 28, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on August 8, 2017. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated July 28, 2017?
- b. Whether the tenant is entitled to an order that the landlord comply with the Residential Tenancy Act, Regulations and/or tenancy agreement.
- c. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a one year fixed term tenancy agreement that provided that the tenancy would start on September 1, 2013, end on August 31, 2014 and the tenant would have to vacate at that time. The tenancy agreement provided that the tenant(s) would pay rent of \$1175 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$587.50 on August 8, 2017.

The tenant continued to live in the rental unit after the expiry of the fixed term and the landlord accepted the rent payments made by the tenant.

Grounds for Termination:

The Notice to End Tenancy identifies the following grounds:

- Tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
 - jeopardize a lawful right or interest of another occupant or the landlord
- ...
- Tenant has assigned or sublet the rental unit/site without landlord's written consent

The landlord seeks to end the tenancy based on the following evidence:

- The tenant has been engaged in permitting short term rentals using the platform of Air-bnb and other online services without the permission of the landlord.
- She has received complaints from others in the rental property.
- The operation of a business such as this without the permission of the landlord is contrary to the tenancy agreement.
- This amounts to a sub-lease which is contrary to the tenancy agreement.
- The term of the tenancy has expired and the tenancy agreement provided that the tenancy must vacate the rental unit.
- The on-line calendar indicates that it is fully booked.
- There are 40 units in the rental property. The tenant lives in a basement unit.
- On questioning the landlord acknowledged that she was not aware of any law that the tenant had broken and that there is no specific term in the tenancy agreement that prohibits short term rentals such as this. The tenancy agreement used by the landlord for new tenants includes a term that specifically prohibits short term rentals such as Air-bnbs.

The tenant gave the following evidence:

- His rental unit is approximately 550 square feet.
- He is a geologist and is out of town for 3 weeks and returns for 3 weeks.
- The calendar referred by the landlord indicates that the unit is not available to rent during those periods. This does not mean the unit is fully rented as he returns and lives in the rental unit for much of that time.
- The previous owners were aware of this and did not object.
- The landlord failed to present evidence of a safety risk.
- He has not breached any law or done anything illegal.
- There is no term in his tenancy agreement that prohibits this short term rentals.

Analysis:

After carefully considering all of the evidence I determined the landlord failed to establish sufficient grounds to end the tenancy for the following reasons:

- I do not accept the submission of the landlord that the tenancy ended at the expiry of the fixed term on August 31, 2014. The tenant continued to pay rent. The landlord accepted without conditions and in so doing reinstated the tenancy on a month to month basis.
- The landlord failed to present sufficient evidence that the tenant has engaged in an illegal activity. The landlord was not able to identify what law the tenant has breached or how a short term rental such as this amounts to an illegal activity.
- The tenancy agreement does not include a provision that prohibits short term rentals such as this.
- The landlord alleged but failed to prove the short term rental such as this has created a significant safety risk.
- I determine the short term rental such as this does not amount to a sublet.

Policy Guideline #19 includes the following:

“Use of rental property for travel/vacation accommodation

Section 4 of the RTA states that the Act does not apply to living accommodations occupied as vacation or travel accommodation and there is no recourse under the RTA for disputes arising from vacation or travel accommodation. However, there have been dispute resolution proceedings arising from tenants who have rented out all or part of their rental unit via AirBnB or other vacation/rental listing services and their landlord has issued a One Month Notice to End Tenancy (form RTB-33) for the tenant’s failure to obtain the landlord’s written consent to sublet.

As stated above within section C, unless the tenant is acting as an agent for the landlord or has moved out of the unit, this is not a true sublet under the RTA. It is unlikely that a One Month Notice to End Tenancy (form RTB-33) for cause for the tenant's failure to obtain the landlord's written consent to sublet would be successful in these circumstances, although this type of action by a tenant may constitute other breaches of the Act or tenancy agreement for which the landlord might issue a One Month Notice to End Tenancy (form RTB-33).

Tenants and landlords should be aware that there may be municipal bylaws and strata restrictions against use of property for travel or vacation accommodations, as well as insurance ramifications in the event of a problem client who causes damages to the unit. The tenant is responsible for any damages caused by any guest or occupant in the rental unit. A landlord could issue a One Month Notice to End Tenancy (form RTB- 33) for cause if the rental unit suffered damages as a result of the actions of the tenant or any guest/occupant of the tenant.

As a result, landlords may wish to ensure that additional terms to address this are included in any tenancy agreement in order to maintain control over who occupies the rental unit and for what purposes the rental unit is used. As these are not standard terms of a tenancy agreement under the Act, a prospective tenant and the landlord would have to agree to any additional terms being added to the tenancy agreement. If a tenant were to violate such a term, the landlord could issue a One Month Notice to End Tenancy (form RTB-33) for cause for breach of a material term of the agreement. The decision to end the tenancy would be upheld if an arbitrator finds that the terms of the tenancy agreement were material terms that were not unconscionable and that the tenant breached those terms.

- I determined the arrangement the tenant had with his guests does not amount to a sub let. The tenant has temporarily given up possession of the rental unit but most of his belongings remain there.
- Further, section 4 provides that the Act does not cover living accommodations occupied as vacation or travel accommodations.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord failed to establish sufficient cause to end the tenancy. As a result I ordered that the one month Notice to End Tenancy dated July 28, 2017 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged. As the tenant has

been successful with this application I further ordered that the landlord pay to the Tenant the sum of \$100 for the cost of the filing fee such sum may be deducted from further rent.

The landlord expressed concern about the long term consequences if Air-bnbs are permitted. Many landlords have dealt with that by including a specific term in the tenancy agreement (identified as a material term) specifically prohibiting it. The landlord acknowledged her new tenancy agreements include such a clause.

Further, the result of this decision might have been different if the landlord had presented sufficient evidence that this amounted to engaging in an illegal activity, the tenant had breached a material term of the tenancy agreement or that there is evidence that the Tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- put the landlord's property at significant risk.

This decision is final and binding on the parties.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Residential Tenancy Act.

Dated: October 20, 2017

Residential Tenancy Branch